MALAYSIAN REPORTS

NG KOK JOOI v. PUBLIC PROSECUTOR

[A.Cr.J. (Arulanandom J.) February 12, 1974]
[Kuantan — Criminal Appeal No. 13 of 1973]

Criminal Law and Procedure — Sentence — Bribery and Corruption — Giver and receiver of bribe — Culpability of — Types of givers and receivers — Observations on sentence — Prevention of Corruption Act, 1961, s. 4(b).

In this case the appellant was convicted of giving a bribe to a police inspector after he had been caught in a speed trap. He was sentenced to four months' imprisonment.

Held: while the law makes the giver of bribes equally culpable with the receiver, in considering sentence the court should take the circumstances of the case into consideration. In this case the sentence of imprisonment was obviously excessive and should be substituted with a fine of $300/-.

CRIMINAL APPEAL.

S. Sivasubramanian for the appellant.

Sheikh Daud bin Haji Mohamed Ismail (Deputy Public Prosecutor) for the respondent.

Arulanandom J.: This is an appeal from the decision of the President, Sessions Court, Kuantan, against a conviction of the appellant on a charge under section 4(b) of the Prevention of Corruption Act, No. 42 of 1961, and the sentence of 4 months' imprisonment.

The brief facts of the case are as follows. On the 19th of June, 1972, the traffic police of Kuantan put up a speed trap at the 1st mile Jalan Tanah Puteh, Kuantan. The accused was caught in the speed trap. From the evidence of the police he then immediately turned round and stopped and went to see Inspector Kamar bin Othman. According to the appellant, before turning round to go to see Inspector Kamar he made some enquiries as to who the officer in charge of the trap was but whichever version is correct it does not make a great difference to me. When he met Inspector Kamar bin Othman he asked him to let him go and said he would settle it for $30 and asked Inspector Kamar to meet him at the Malayan Banking at about 8 p.m. that day. Inspector Kamar bin Othman returned to the police station and after instructing P.C. Chong to lodge a report for speeding offence in respect of the accused and also for an offence of driving without a licence he reported the matter to Inspector Zakariah of the Anti-Corruption Agency, Kuantan. A report was lodged and he was advised not to keep the appointment at Malayan Banking. On the 20th June, 1973, accused came to the office and pleaded with him not to take action against him in respect of the traffic offences and he gave him $30. This was corroborated except in some minor detail by Inspector Abdul Aziz who was at the speed trap with Inspector Kamar and also by Inspector Zakariah of the Anti-Corruption Agency in most material particulars. The accused in his defence made a bare statement that he intended to compound the offence.

The learned President did not accept the defence and convicted him.

As I did not see any merit in the appeal against conviction I do not propose to go into details. Therefore I dismissed the appeal against conviction.

Regarding the question of sentence the learned President held that corruption was evil and the giver of gratification to a government servant should be punished adequately. I quote:

"There would be no corruption if there were no willing giver like the accused."

To my mind while the law makes the giver equally culpable as the receiver, in considering sentence the court should take certain factors into account. The accepter of a bribe is motivated by greed, he betrays the trust reposed in him and brings disgrace to the administration which has entrusted him with a duty to serve the public. He shows no respect for the Rukun Negara and generally has no extenuating factors to be considered on his behalf. The giver, on the other hand, in cases such as the one before us, is motivated partly by fear of being charged before the court; secondly, of a desire not to be inconvenienced by spending long hours in police stations and lower courts waiting to be tried — an exercise which involves him in a tremendous loss of time which to a small trader or individual businessman means loss of income and perhaps disruption of livelihood. To impose sentences on such people as severely as one would impose on public servants to my mind would not be equitable and in the public interest. A sentence of imprisonment in such a case as this is obviously excessive.

While I have spoken about the givers there is one qualification I would like to add. All givers of bribes are not in the same category. My remarks are only meant to apply to the giver who is suddenly caught by a traffic constable, or hawker who pitched his stall at the wrong place and is apprehended by a constable, or a cyclist caught riding without bicycle lights. There is another type of giver who should be treated with equal if not more severity than public servants and that is the organiser of a syndicate to smuggle drugs to deal in opium traffic, to organise illegal gambling and the like. These givers cannot by any stretch of imagination be treated like the giver in the case before us. For these givers are the very destroyers of society. They deliberately break the law for their own benefit; and in order that they may not be apprehended, that they may escape the law, they offer bribes to those in authority and thus deliberately pervert justice and corrupt the establishment of law and order. These givers should be treated, as I said earlier, with as much severity, if not more severity, than public servants who accept bribes.

For these reasons I set aside the sentence of 4 months' imprisonment and substitute a fine of $300.

Order accordingly.

Solicitors: *S. Sivasubramanian.*